

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION

MDL No. 3:16-md-2738-MAS-LHG

JUDGE MICHAEL A. SHIPP
MAG. JUDGE LOIS H. GOODMAN

THIS DOCUMENT RELATES TO:

Civil Case No. 3:20-cv-03797-MAS-LHG

DIANA LYNN LIPTON v. JOHNSON &
JOHNSON, et al.

MOTION TO SUBSTITUTE PARTY-PLAINTIFF UNDER RULE 25(a)(1)

Counsel for plaintiff, Diana Lynn Lipton, respectfully move this Court to substitute Evelyn Willner, Heidi Moxon Morishita, Linda Moxon, and Bennett Moxon, the siblings of, and co-successors-in-interest for, plaintiff Diana Lynn Lipton, now deceased, in order to continue the matter as a survival action and to allege claims for wrongful death pursuant to Rule 25 of the Federal Rules of Civil Procedure.

1. On December 1, 2019, plaintiff Diana Lynn Lipton filed a products liability lawsuit in San Francisco Superior Court, Case No. CGC-19-581384. Thereafter, the matter was removed to the United States District Court for the Northern District of California, Case No. 3:20-cv-01841-JCS. On March 27, 2020, the matter was transferred (Conditional Transfer Order – 206) to the United States District Court for the

District of New Jersey for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. section 1407. (Member Case Dkt. 14.)

2. Diana Lynn Lipton died on December 8, 2022, due to injuries caused by the negligent acts and omissions alleged in her original and First Amended Complaints, filed in San Francisco Superior Court, as well as in her Short Form Complaint, filed in the instant MDL. (Member Case Dkt. 20.) A redacted copy of Ms. Lipton's Death Certificate is attached hereto as *Exhibit A*.

3. A Notice of Suggestion of Death was filed with this Court on August 21, 2023. (MDL 2738 Dkt. 26784.)

4. Diana Lynn Lipton is survived by her four siblings, Evelyn Willner, Heidi Moxon Morishita, Linda Moxon, and Bennett Moxon.

5. Declarations executed by co-successors-in-interest Evelyn Willner, Heidi Moxon Morishita, Linda Moxon, and Bennett Moxon are attached hereto as *Exhibits B, C, D, and E*, respectively, pursuant to California Code of Civil Procedure section 377.32.

6. The claims made by Diana Lynn Lipton against Defendants herein survive her death. Cal. Code Civ. Proc. § 377.20 (a); Fed. R. Civ. P. 25(a)(1). Under California and federal law, the claims against the Defendants may be instituted as if the deceased person were still alive. Id.

7. Additionally, Diana Lynn Lipton's surviving siblings, Evelyn Willner, Heidi Moxon Morishita, Linda Moxon, and Bennett Moxon, have the capacity to pursue individual claims as wrongful death beneficiaries.

8. It is respectfully requested that this Court enter an Order substituting Evelyn Willner, Heidi Moxon Morishita, Linda Moxon, and Bennett Moxon as co-successors-in-interest for deceased plaintiff, Diana Lynn Lipton, and a wrongful-death claimants to allege claims for wrongful death. A proposed Order is attached as *Exhibit F*.

Dated: August 28, 2023

Respectfully submitted,

/s / Clarissa E. Kearns
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 28, 2023, this document was filed and electronically served by way of the CM/ECF filing system. Notice of this filing will be served on all parties of record by operation of the ECF system and parties may access the filing through the ECF system.

/s / Clarissa E. Kearns
Clarissa E. Kearns